

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2014-346-WS

IN RE:)	MOTION TO COMPEL PRODUCTION
Application of Daufuskie Island Utility)	OF DOCUMENTS BY DAUFUSKIE
Company, Incorporated for Approval of an)	ISLAND UTILITY COMPANY, INC.
Increase for Water and Sewer Rates, Terms and)	OR, ALTERNATIVELY, TO STRIKE
Conditions)	TESTIMONY

Pursuant to S.C. Code ann. §§ 58-4-55, 58-5-230, S.C. Code Ann. Regs. §§ 103-517, 103-719, 103-835, Rules 26, 34, and 37 of the South Carolina Rules of Civil Procedure, and Commission Order Nos. 2020-496 and 2009-154¹ the South Carolina Office of Regulatory Staff (“ORS”), by and through counsel, hereby moves the Public Service Commission of South Carolina (“Commission”) for an order compelling Daufuskie Island Utility Company, Inc. (“DIUC”) to respond to Request 1-1 of ORS’s First Continuing Request for Production of the Second Remand. In the alternative ORS respectfully requests that Commission strike the testimony of DIUC witness John Guastella, filed on June 16, 2020, to the extent it relates to recovery of rate case expenses because DIUC has refused to provide the specific documents that would either support or refute such testimony. In support of this Motion, ORS states the following:

Introduction and Background

On June 29, 2020, ORS served on DIUC its first and continuing request for production of documents for the second remand proceeding. DIUC submitted a response on July 10, 2020, in

¹ Order No. 2009-154 states “[i]f requested, copies of the books will be provided to [ORS] either the same day or the next business day of its request,” and “[i]n the event of any investigation by the Commission or ORS with respect to rate cases or any other matter for which ORS requests access to the books and records, the Company states it will make a full set of the requested records available at a location in South Carolina that is acceptable to ORS.”

which it unjustifiably alleged that ORS's request for production of documents was in direct contradiction of a ruling of the South Carolina Supreme Court. DIUC filed its July 10, 2020, response with the Commission and the same is attached hereto as Motion Exhibit 1. Subsequently, ORS filed a Motion for Clarification with the Commission seeking to determine whether the Commission sought to have ORS continue its investigatory review or cease to conduct any further review of DIUC and allow the Commission to rely upon the record as it stood at the time. On July 22, 2020, in response to the ORS Motion for Clarification, the Commission issued Order No. 2020-246, in which it requested that ORS continue its investigatory review of DIUC's rate case invoices.² Accordingly, on July 23, 2020, counsel for ORS reached out to counsel for DIUC via e-mail and "once again [reiterated] the [previously sent request] that all documentation that demonstrates payment of these invoices be provided." Additionally, counsel stated ORS's position that it "is imperative that the parties cooperatively work together to ensure all pertinent information is readily available." On July 24, 2020, ORS issued a second continuing request for production of documents for the second remand proceeding. DIUC submitted a response on August 7, 2020, in which it again made the same unjustifiable accusations against ORS. DIUC filed its August 7, 2020, response with the Commission and the same is attached hereto as Motion Exhibit 2.

Support for Motion and Conclusion

South Carolina Code § 58-4-50 directs ORS to inspect, audit, and examine public utilities and make appropriate recommendations to the Commission regarding matters within the jurisdiction of the Commission when in the public interest.³ Moreover, ORS "must represent the

² Additionally, the Commission requested that ORS report its findings of the investigatory review back to the Commission within 30 days of the date of receipt of that Order.

³ S.C. Code Ann. § 58-4-50(A)(1)-(2) states "(A) It is the duty and responsibility of the regulatory staff to: (1) when considered necessary by the Executive Director of the Office of Regulatory Staff and in the public interest, review, investigate, and make appropriate recommendations to the commission with respect to the rates charged or proposed to be charged by any public utility;

public interest of South Carolina before the commission... ‘public interest’ means the concerns of the using and consuming public with respect to public utility services, regardless of the class of customer, and preservation of continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services.”⁴

The above statutes, as well as South Carolina Code Ann. §§ 58-4-55 and 58-5-230, confirm that ORS has a statutory right and obligation to examine a utility’s records.⁵ Just as important, South Carolina Code of Regulations §§ 103-517 and 103-719, declare that in addition to having access to the utility’s records, the utility must also be fully cooperative.⁶ Commission Order No. 2020-496 requests that ORS continue its investigatory review and Order No. 2009-154 requires DIUC to provide books and records to ORS upon request. Finally, according to a filing made by Mr. John Guastella, on behalf of Guastella Associates, if ORS requests books DIUC would provide them “to ORS either the same day or the next business day of its request.” In that same filing, Mr. Guastella also committed that “[i]n the event of any investigation by the PSC or ORS with respect to rate cases or any other matter for which ORS requests access to the books and records, we will

(2) when considered necessary by the Executive Director of the Office of Regulatory Staff and in the public interest, make inspections, audits, and examinations of public utilities regarding matters within the jurisdiction of the commission. The regulatory staff has sole responsibility for this duty but shall also make such inspections, audits, or examinations of public utilities as requested by the commission....”

⁴ S.C. Code Ann. § 58-4-10(B).

⁵ According to S.C. Code Ann. §58-4-55, “[t]he regulatory staff, in accomplishing its responsibilities under Section 58-4-50, may require the production of books, records, and other information to be produced at the regulatory staff’s office, that, upon request of the regulatory staff, must be submitted under oath and without the requirement of a confidentiality agreement or protective order being first executed or sought.” According to S.C. Code Ann. §58-5-230, “[t]he books and accounts of all public utilities shall be subject to the examination of the regulatory staff at any time.”

⁶ According to S.C. Code Ann. Regs. § 103-517, “[a]ll books and records of the utility shall be maintained in accordance with the NARUC Uniform System of Accounts for Class A, B and C Sewerage Utilities to the extent applicable. Such records must be made available for examination by the ORS or its authorized representatives at all reasonable hours. Full cooperation will be provided by the utility during rate adjustment audits or compliance audits conducted by the ORS or its representatives.” According to S.C. Code Ann. Regs. § 103-719, “[a]ll books and records of the utility shall be maintained in accordance with the NARUC Uniform System of Accounts for Class A, B and C Water Utilities to the extent applicable, and such records must be made available for examination by the ORS or its authorized representatives at all reasonable hours. Full cooperation will be provided by the utility during rate adjustment audits or compliance audits conducted by the ORS or its representatives.”

make a full set of requested records available at a location in South Carolina that is acceptable to ORS.”⁷ The ongoing obligations of DIUC and the statutory rights of ORS are absolutely clear in this case.

ORS Request 1-1 clearly requested that DIUC provide all documents that support Rate Case Expenses of \$269,356, as specifically identified in the testimony of John Guastella. In response, DIUC stated that supporting documentation was produced to ORS on October 17, 2017, and through previously filed testimony and exhibits. DIUC also included a one-page chart entitled “GA Rate Case Invoices and Payments to Date.” This was the first time in this proceeding, or any other, that DIUC asserted these invoices had been paid. According to DIUC’s chart, DIUC made payments as recently as June 26, 2020. The most recent testimony filed by DIUC occurred on June 16, 2020, which is ten days before the most recent rate case expenses were paid by DIUC. Therefore, it is reasonable to assume that DIUC’s previously submitted responses and testimony may not have, in fact, provided all relevant documentation supporting the Rate Case Expenses for which DIUC now seeks recovery from its ratepayers. Under these circumstances, ORS cannot state with any certainty that DIUC’s previously submitted responses and testimony provided all of the documentation that DIUC possesses because DIUC has refused to indicate which specific invoices comprise the \$269,356 for which it now seeks recovery. ORS took prudent and appropriate action to obtain this relevant rate case expense information from DIUC a second time on July 23, 2020. Unless DIUC does in fact lack specific documentation to establish which of its own invoices comprise the \$269,356 for which it now seeks recover from its ratepayers, it has once again refused to cooperate.

⁷ See Letter filed by Mr. John Guastella in Docket No. 2007-414-WS, on August 19, 2008.

DIUC is under a continuing obligation, according to the South Carolina Code of Laws, South Carolina Code of Regulations, previous Commission Orders, and its own direct commitments to cooperate with ORS and provide copies of books and information when requested. While ORS has consistently worked to cooperate with DIUC during the entirety of this Remand proceeding, DIUC has now taken an approach which ORS believes is in direct contradiction of its statutory, regulatory, and Commission established obligations. Rather than cooperate, DIUC has chosen to retreat to a course of action making unjustified allegations and complaints that ORS, working to be in compliance with the Commission's Orders, is somehow applying an unlawful and improper level of scrutiny. DIUC asserts that the Supreme Court's ruling prohibits ORS from asking even the most basic of rate case discovery questions. In doing so, DIUC seeks to obstruct the regulatory process by prohibiting ORS from conducting its statutory review. The regulatory process requires a comprehensive examination by ORS of all underlying Company data and information that the Company claims support its rate increase to determine if the actual Company books and records in fact are consistent with the representations made by Company witnesses in this proceeding. Based on the conduct of the Company, the answers to certain ORS discovery materials remain unanswered and unknown.

Based upon the aforementioned, ORS respectfully moves that the Commission issue an order compelling DIUC to fulfil its regulatory obligations by cooperating and fully responding to Request 1-1 of ORS's First Continuing Request for Production of the Second Remand. In the alternative ORS respectfully requests that Commission strike the testimony of DIUC witness John Guastella, filed on June 16, 2020, to the extent it relates to recovery of rate case expenses because DIUC has refused to provide the specific documents that would either support or refute such testimony.

Respectfully submitted,

SOUTH CAROLINA OFFICE
OF REGULATORY STAFF

By:



Andrew M. Bateman, Esquire
Jeffrey M. Nelson, Esquire
SOUTH CAROLINA
OFFICE OF REGULATORY STAFF
1401 Main Street, Suite 900
Columbia, South Carolina 29201
Phone: (803) 737-8440
(803) 737-0889
Fax: (803) 737-0895
E-mail: abateman@ORS.SC.Gov
jnelson@ORS.SC.Gov

August 17, 2020
Columbia, South Carolina

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2014-346-WS

IN RE: Application of Daufuskie Island Utility Company, Incorporated for Approval of An Increase for Water and Sewer Rates, Terms and Conditions-Second Remand)	DAUFUSKIE ISLAND UTILITY COMPANY, INC.'S RESPONSES TO SOUTH CAROLINA OFFICE OF REGULATORY STAFF'S FIRST CONTINUING REQUEST FOR PRODUCTION OF THE SECOND REMAND
)	
)	
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)	

TO: ANDREW M. BATEMAN, ESQUIRE, ATTORNEY FOR THE SOUTH CAROLINA OFFICE OF REGULATORY STAFF ("ORS")

Daufuskie Island Utility Company, Inc. ("DIUC") hereby responds to The South Carolina Office of Regulatory Staff's ("ORS") First Continuing Request for Production of the Second Remand pursuant to S.C. Code Ann. § 58-4-55 (Supp. 2019), 58-5-230, S.C. Code Regs., 103-517, and 103-719 as follows:

ORS Request 1-1

Please provide all documents that support Rate Case Expenses of \$269,356 as identified in the Second Rehearing Direct Testimony of John F. Guastella (p. 17, l. 6) including, but not limited to, the calculation, reconciliation and vendor invoices.

(a) Please provide all documentation to demonstrate the invoices that are included in the amount of \$269,356 have been paid by DIUC.

RESPONSE:

DIUC objects to this Request because it is unduly burdensome and because in direct contradiction of a ruling of the South Carolina Supreme Court, the Request seeks to impose a higher level of scrutiny and an increased burden of production regarding the extensive documentation DIUC has already provided to ORS and to the Commission regarding DIUC's Rate Case Expenses. *See DIUC v. S.C. Office Reg. Staff*, 427 S.C. 458, 462-3, 832 S.E.2d 572, 574 (2019), *reh'g denied* (Sept. 27, 2019) (hereinafter "*DIUC II*"). Subject to and preserving its objections, DIUC responds as follows:

Documents supporting the Rate Case Expenses sought by DIUC were produced with DIUC's Responses to Office of Regulatory Staff's First Continuing Audit Information Request in Proceeding on Remand dated October 27, 2017 and Attachment to ORS 1-12 Rate Case Expenses therewith produced. DIUC also previously provided ORS and the Commission support for its requested Rate Case Expenses, through testimony and exhibits. See Transcript of Proceedings (October 28, 2015), Transcript of Proceedings (December 6 and 7, 2017), Prefiled Second Rehearing Testimony of John F. Guastella (June 16, 2020). DIUC incorporates and relies upon these documents and transcripts. Provided herewith is a one-page chart entitled GA Rate Case Invoices and Payments to Date. Additional testimony and documents may also be provided as this second rehearing proceeding continues, including future testimony, both prefiled and live testimony, and exhibits.

Respectfully submitted,

/s/ Thomas P. Gressette Jr.

Thomas P. Gressette, Jr.

Direct: (843) 727-2249

Email: Gressette@WGFLAW.com

G. Trenholm Walker

Direct: (843) 727-2208

Email: Walker@WGFLAW.com

WALKER GRESSETTE FREEMAN & LINTON, LLC

Mail: P.O. Box 22167, Charleston, SC 29413

Office: 66 Hasell Street, Charleston, SC 29401

Phone: (843) 727-2200

July 10, 2020

Charleston, South Carolina

Attachments:

Verification

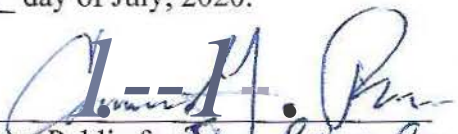
GA Rate Case Invoices and Payments to Date (July 10, 2020)

VERIFICATION

I, John F. Guastella, General Manager of Daufuskie Island Utility Company, hereby affirm that the foregoing DAUFUSKIE ISLAND UTILITY COMPANY, INC.'S RESPONSES TO SOUTH CAROLINA OFFICE OF REGULATORY STAFF'S FIRST CONTINUING REQUEST FOR PRODUCTION OF THE SECOND REMAND are true and accurate to the best of my knowledge based on my understanding of the questions.


John F. Guastella

SWORN to before me this
10th day of July, 2020.


Notary Public for FD, Palm Beach Co.
My Commission Expires: July 2, 2023

Notary Public State of Florida
Cameron G Reese
My Commission GG 351377
Expires July 2, 2023

GA Rate Case Invoices and Payments to Date

EXHIBIT 1

	<u>GA Consulting - Rate Case Docket No 2014-346-WS</u>	<u>Invoice No.</u>	<u>Due</u>	<u>Paid</u>
	Invoiced 7.10.14	133	\$ 1,612.50	12.1.14
	Invoiced 9.5.14	139	\$ 16,687.50	12.1.14
	Invoiced 10.14.14	145	\$ 5,130.00	12.1.14
	Invoiced 11.11.14	151	\$ 13,122.50	8.22.18
	Invoiced 12.9.14	165	\$ 14,600.00	8.22.18
	Invoiced 1.5.15	170	\$ 19,932.50	8.22.18
	Invoiced 2.10.15	179	\$ 25,239.02	8.22.18
	Invoiced 3.6.15	184	\$ 15,692.50	8.22.18
	Invoiced 4.8.15	192	\$ 4,792.50	8.22.18
	Invoiced 5.20.15	204	\$ 17,992.50	8.22.18
	Invoiced 6.5.15	209	\$ 19,067.48	8.22.18
	Invoiced 7.1.15	211	\$ 53,810.00	8.22.18
	Invoiced 8.10.15	215	\$ 67,860.00	8.22.18
	Invoiced 10.14.15	223	\$ 19,870.00	8.22.18
	Invoiced 11.9.15	228	\$ 82,695.34	10.10.19
	Invoiced 12.11.15	232	\$ 37,812.50	11.16.19
	Invoiced 1.6.16	236	\$ 17,412.50	11.16.19
	Invoiced 2.4.16	242	\$ 14,652.50	3.18.20
	Invoiced 3.12.16	247	\$ 3,772.50	3.26.20
	Invoiced 5.16.16	259	\$ 5,562.50	3.26.20
	Invoiced 6.21.16	263	\$ 8,522.50	3.26.20
	Invoiced 7.13.16	269	\$ 5,617.50	3.26.20
	Invoiced 8.12.16	274	\$ 2,537.50	3.26.20
	Invoiced 9.6.16	277	\$ 15,357.50	3.26.20
	Invoiced 11.18.16	288	\$ 1,307.50	6.26.20
	Invoiced 1.9.17	292	\$ 22,117.50	6.26.20
	Invoiced 7.17.17	327	\$ 7,825.00	6.26.20
	Invoiced 8.18.17	333	\$ 2,325.00	
	Invoiced 9.15.17	335	\$ 9,700.00	
	Invoiced 10.17.17	337	\$ 10,351.25	
	Total as of November 1, 2017		\$ 542,978.09	

Amount Paid to date

\$ 520,601.84

Note: Does not include subsequent billings.

CERTIFICATE OF SERVICE

This is to certify that on July 10, 2020, I caused to be served upon the counsel of record named below a copy of the foregoing **DAUFUSKIE ISLAND UTILITY COMPANY, INC.'S RESPONSES TO SOUTH CAROLINA OFFICE OF REGULATORY STAFF'S FIRST CONTINUING REQUEST FOR PRODUCTION OF THE SECOND REMAND** via electronic mail, as indicated. A copy of the Responses were also filed via the Commission's DMS.

Andrew M. Bateman, Esq. (abateman@ors.sc.gov)

Jeff Nelson, Esq. (jnelson@ors.sc.gov)

John J. Pringle, Jr., Esq. (jack.pringle@arlaw.com)

John F. Beach, Esq. (john.beach@arlaw.com)

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2014-346-WS

IN RE: Application of Daufuskie Island Utility)
Company, Incorporated for Approval of)
An Increase for Water and Sewer Rates,)
Terms and Conditions-Second Remand)
_____)

**DIUC’S SUPPLEMENTAL RESPONSES TO ORS’S FIRST CONTINUING REQUEST
FOR PRODUCTION OF THE SECOND REMAND
AND
DIUC’S RESPONSES TO ORS’S SECOND CONTINUING REQUESTS FOR
PRODUCTION OF THE SECOND REMAND WITH OBJECTIONS**

TO: ANDREW M. BATEMAN, ESQUIRE,
ATTORNEY FOR THE S.C. OFFICE OF REGULATORY STAFF (“ORS”)

Daufuskie Island Utility Company, Inc. (“DIUC”) hereby supplements its Responses to The South Carolina Office of Regulatory Staff’s (“ORS”) First Continuing Request for Production of the Second Remand and provides these Responses to ORS’s Second Continuing Request for Production of the Second Remand.

REQUEST 1-1

Please provide all documents that support Rate Case Expenses of \$269,356 as identified in the Second Rehearing Direct Testimony of John F. Guastella (p. 17, l. 6) including, but not limited to, the calculation, reconciliation and vendor invoices.

- (a) Please provide all documentation to demonstrate the invoices that are included in the amount of \$269,356 have been paid by DIUC.**

RESPONSE:

DIUC objects to this Request because it is unduly burdensome and because it is imposed in direct contradiction of rulings of the South Carolina Supreme Court. DIUC further objects because the Request imposes a higher level of scrutiny and an increased burden of production upon DIUC in addition to the extensive documentation DIUC has already provided to ORS and to the Commission regarding DIUC’s Rate Case Expenses. By requesting more information about the rate case payments to Guastella Associates (“GA”), ORS is again engaging in the precise conduct

rejected by the Supreme Court in the recent appeal of the Commission's Order on Rehearing. Addressing this issue, the Court ruled:

Additionally, in contrast to the commission's assessment of the invoices in its order after the initial hearing, the commission heavily scrutinized the format of the Guastella invoices on remand. The commission's order on remand provides, "The Commission agrees with ORS.... The evidence shows that a large sum of what DIUC seeks was based on invoices that could not be verified." The commission's order denying DIUC's motion for reconsideration also provides, "ORS ... completed a thorough review of all invoices from Guastella Associates, and found that they 'contained mathematical errors, lacked sufficient detail, and/or did not appear to be paid.'" However, the commission expressed these concerns with the invoices only in its evaluation on remand. The commission's harsher treatment of the *same* invoices on remand—of which rate case expenses were previously awarded—convinces us the commission itself employed a retaliatory standard of scrutiny.

DIUC v. S.C. Office Reg. Staff, 427 S.C. 458, 462-3, 832 S.E.2d 572, 574 (2019), *reh'g denied* (Sept. 27, 2019) (hereinafter "*DIUC II*"). The Court specifically rejected the Commission's adoption on remand of ORS's position that the costs attributable to GA for rate case work required further documentation to verify they had been paid. The Court was clear in its assessment of the higher standard ORS now seeks again to impose upon these same invoices:

...these retaliatory actions by ORS are deeply troubling. We rightfully demand more of government representatives—like ORS—than such an unprofessional approach to the legitimate financial interests of South Carolina businesses, *and* of South Carolina utility ratepayers. Likewise, we expect more respect for the rulings of this Court that administrative officers exhibit when they retaliated against parties who prevail against them on appeal.

DIUC II, 427 S.C. at 460. In fact, the higher standard ORS seeks to impose and the burden upon DIUC to respond to discovery and produce additional documents now is even more harsh than before. It should also be noted that the information sought is still absolutely irrelevant as to whether DIUC actually incurred the rate case expenses at issue.

Subject to and preserving its objections, DIUC responds as follows:

Documents supporting the Rate Case Expenses sought by DIUC were produced with DIUC's Responses to Office of Regulatory Staff's First Continuing Audit Information Request in Proceeding on Remand dated October 27, 2017, and Attachment to ORS 1-12 Rate Case Expenses therewith produced. DIUC also previously provided ORS and the Commission support for its requested Rate Case Expenses, through testimony and exhibits. *See* Transcript of Proceedings (October 28, 2015), Transcript of Proceedings (December 6 and 7, 2017), Prefiled Second Rehearing

Testimony of John F. Guastella (June 16, 2020). DIUC incorporates and relies upon these documents and transcripts.

DIUC's Responses to ORS's First Continuing Request for Production of the Second Remand dated July 10, 2020, provided to ORS a one-page chart entitled GA Rate Case Invoices and Payments to Date and stated additional testimony and documents may also be provided as this second rehearing proceeding continues, including future testimony, both prefiled and live testimony, and exhibits. *See* Docket #292711, incorporated herein as if restated in its entirety.

Also, attached please find DIUC Response Attachment 2-1.

REQUEST 2-1

In reference to the one-page chart labeled as "GA Rate Case Invoices and Payments to Date" provided by DIUC in response to ORS Request 1-1, please provide the following information and documents for each of the 27 payments made by DIUC and listed in the one-page chart:

- (a) A copy of the bank statement for the applicable month in which the payment cleared the bank to demonstrate the payments were completed. Please highlight on each bank statement the payments for the invoices.**
- (b) If any of the invoices were aggregated into a single payment, provide a listing of the invoice groupings (that foot to a total) to assist in tracking the payment to the bank statement.**
- (c) Identify if DIUC paid a late fee, surcharge, penalty or interest for which it now seeks recovery from its ratepayers. If a late fee, surcharge, penalty, or interest was paid, for which DIUC now seeks recovery from its ratepayers, provide a copy of the invoice with the late fee, surcharge, penalty or interest amount listed.**
- (d) If DIUC paid a late fee, surcharge, penalty or interest for which it now seeks recovery from its ratepayers, provide the executed agreement that authorizes the late fee, surcharge, penalty, or interest.**
- (e) Name and title of the individual responsible for the approval of the invoices for payment.**
- (f) Name and title of the individual responsible for processing the payment.**

RESPONSE:

DIUC objects to this Request because it is unduly burdensome and because it is imposed in direct contradiction of rulings of the South Carolina Supreme Court. DIUC further objects because the Request imposes a higher level of scrutiny and an increased burden of production upon DIUC in addition to the extensive documentation DIUC has already provided to ORS and to the Commission regarding DIUC's Rate Case Expenses. By requesting more information about the rate case payments to Guastella Associates ("GA"), ORS is again engaging in the precise conduct

rejected by the Supreme Court in the recent appeal of the Commission's Order on Rehearing. Addressing this issue, the Court ruled:

Additionally, in contrast to the commission's assessment of the invoices in its order after the initial hearing, the commission heavily scrutinized the format of the Guastella invoices on remand. The commission's order on remand provides, "The Commission agrees with ORS.... The evidence shows that a large sum of what DIUC seeks was based on invoices that could not be verified." The commission's order denying DIUC's motion for reconsideration also provides, "ORS ... completed a thorough review of all invoices from Guastella Associates, and found that they 'contained mathematical errors, lacked sufficient detail, and/or did not appear to be paid.'" However, the commission expressed these concerns with the invoices only in its evaluation on remand. The commission's harsher treatment of the *same* invoices on remand—of which rate case expenses were previously awarded—convinces us the commission itself employed a retaliatory standard of scrutiny.

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...these retaliatory actions by ORS are deeply troubling. We rightfully demand more of government representatives—like ORS—than such an unprofessional approach to the legitimate financial interests of South Carolina businesses, *and* of South Carolina utility ratepayers. Likewise, we expect more respect for the rulings of this Court that administrative officers exhibit when they retaliated against parties who prevail against them on appeal.

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Subject to and preserving its objections, DIUC responds as follows:

Documents supporting the Rate Case Expenses sought by DIUC were produced with DIUC's Responses to Office of Regulatory Staff's First Continuing Audit Information Request in Proceeding on Remand dated October 27, 2017, and Attachment to ORS 1-12 Rate Case Expenses therewith produced. DIUC also previously provided ORS and the Commission support for its requested Rate Case Expenses, through testimony and exhibits. *See* Transcript of Proceedings (October 28, 2015), Transcript of Proceedings (December 6 and 7, 2017), Prefiled Second Rehearing

Testimony of John F. Guastella (June 16, 2020). DIUC incorporates and relies upon these documents and transcripts.

DIUC's Responses to ORS's First Continuing Request for Production of the Second Remand dated July 10, 2020, provided to ORS a one-page chart entitled GA Rate Case Invoices and Payments to Date and stated additional testimony and documents may also be provided as this second rehearing proceeding continues, including future testimony, both prefiled and live testimony, and exhibits. *See* Docket #292711, incorporated herein as if restated in its entirety.

As to (a) and (b), attached please find DIUC Response Attachment 2-1.

As to (c) and (d), there were no late fees, surcharges, penalties, or interest.

As to (e) and (f), John Guastella, President of GA, and Michal Guastella, Vice President of GA, are responsible for approval and payment of all expenses pursuant to the Management Agreement which is, by its terms, between GA and Daufuskie Island Utility Company, Inc. ("Company" or "DIUC"), the Company's parent corporation, Daufuskie Island Utility Holding Company, LLC ("Parent") and the Parent's individual stockholders, together with the Company's, Parent's and Stockholders' heirs, assigns and successors (collectively, the Company, Parent and Stockholders therein referred to as "Clients").

REQUEST 2-2

Please provide an explanation for why DIUC has not paid the following invoices:

- (a) #333 \$ 2,325.00
- (b) #335 \$ 9,700.00
- (c) #337 \$10,351.25

RESPONSE:

DIUC objects to this Request because it is unduly burdensome and because it is imposed in direct contradiction of rulings of the South Carolina Supreme Court. DIUC further objects because the Request imposes a higher level of scrutiny and an increased burden of production upon DIUC in addition to the extensive documentation DIUC has already provided to ORS and to the Commission regarding DIUC's Rate Case Expenses. By requesting more information about the rate case payments to Guastella Associates ("GA"), ORS is again engaging in the precise conduct rejected by the Supreme Court in the recent appeal of the Commission's Order on Rehearing. Addressing this issue, the Court ruled:

Additionally, in contrast to the commission's assessment of the invoices in its order after the initial hearing, the commission heavily scrutinized the format of the Guastella invoices on remand. The commission's order on remand provides, "The

Commission agrees with ORS.... The evidence shows that a large sum of what DIUC seeks was based on invoices that could not be verified.” The commission’s order denying DIUC’s motion for reconsideration also provides, “ORS ... completed a thorough review of all invoices from Guastella Associates, and found that they ‘contained mathematical errors, lacked sufficient detail, and/or did not appear to be paid.’” However, the commission expressed these concerns with the invoices only in its evaluation on remand. The commission’s harsher treatment of the *same* invoices on remand—of which rate case expenses were previously awarded—convinces us the commission itself employed a retaliatory standard of scrutiny.

DIUC v. S.C. Office Reg. Staff, 427 S.C. 458, 462-3, 832 S.E.2d 572, 574 (2019), *reh’g denied* (Sept. 27, 2019) (hereinafter “*DIUC II*”). The Court specifically rejected the Commission’s adoption on remand of ORS’s position that the costs attributable to GA for rate case work required further documentation to verify they had been paid. The Court was clear in its assessment of the higher standard ORS now seeks again to impose upon these same invoices:

...these retaliatory actions by ORS are deeply troubling. We rightfully demand more of government representatives—like ORS—than such an unprofessional approach to the legitimate financial interests of South Carolina businesses, *and* of South Carolina utility ratepayers. Likewise, we expect more respect for the rulings of this Court that administrative officers exhibit when they retaliated against parties who prevail against them on appeal.

DIUC II, 427 S.C. at 460. In fact, the higher standard ORS seeks to impose and the burden upon DIUC to respond to discovery and produce additional documents now is even more harsh than before. It should also be noted that the information sought is still absolutely irrelevant as to whether DIUC actually incurred the rate case expenses at issue.

Subject to and preserving its objections, DIUC responds as follows:

Documents supporting the Rate Case Expenses sought by DIUC were produced with DIUC’s Responses to Office of Regulatory Staff’s First Continuing Audit Information Request in Proceeding on Remand dated October 27, 2017, and Attachment to ORS 1-12 Rate Case Expenses therewith produced. DIUC also previously provided ORS and the Commission support for its requested Rate Case Expenses, through testimony and exhibits. *See* Transcript of Proceedings (October 28, 2015), Transcript of Proceedings (December 6 and 7, 2017), Prefiled Second Rehearing Testimony of John F. Guastella (June 16, 2020). DIUC incorporates and relies upon these documents and transcripts.

DIUC’s Responses to ORS’s First Continuing Request for Production of the Second Remand dated July 10, 2020, provided to ORS a one-page chart entitled GA Rate Case Invoices and

Payments to Date and stated additional testimony and documents may also be provided as this second rehearing proceeding continues, including future testimony, both prefiled and live testimony, and exhibits. *See* Docket #292711, incorporated herein as if restated in its entirety.

DIUC further states that payments of all DIUC expenses and capital requirements are made according to cash flow, always prioritizing the provision of adequate service to the customers.

Respectfully submitted,

/s/ Thomas P. Gressette Jr.

Thomas P. Gressette, Jr.

Direct: (843) 727-2249

Email: Gressette@WGFLAW.com

G. Trenholm Walker

Direct: (843) 727-2208

Email: Walker@WGFLAW.com

WALKER GRESSETTE FREEMAN & LINTON, LLC

Mail: P.O. Box 22167, Charleston, SC 29413

Office: 66 Hasell Street, Charleston, SC 29401

Phone: (843) 727-2200

August 7, 2020

Charleston, South Carolina

Attachments:

Verification

DIUC Response Attachment 2-1

VERIFICATION

I, John F. Guastella, General Manager of Daufuskie Island Utility Company, hereby affirm that the foregoing **DIUC'S SUPPLEMENTAL RESPONSES TO ORS'S FIRST CONTINUING REQUEST FOR PRODUCTION OF THE SECOND REMAND AND RESPONSES TO ORS'S SECOND CONTINUING REQUEST FOR PRODUCTION OF THE SECOND REMAND WITH OBJECTIONS** are true and accurate to the best of my knowledge based on my understanding of the questions.



John F. Guastella

SWORN to before me this

7 day of ~~July~~ August, 2020.

Robert Blauvelt

Notary Public for Palm Beach, FL.

My Commission Expires: 09/22/2020

Notary Public State of Florida Robert Blauvelt My Commission GG032768 Expires 09/22/2020

CERTIFICATE OF SERVICE

This is to certify that on August 7, 2020, I caused to be served upon the counsel of record named below a copy of the foregoing **DIUC'S SUPPLEMENTAL RESPONSES TO ORS'S FIRST CONTINUING REQUEST FOR PRODUCTION OF THE SECOND REMAND AND RESPONSES TO ORS'S SECOND CONTINUING REQUEST FOR PRODUCTION OF THE SECOND REMAND WITH OBJECTIONS** via electronic mail, as indicated. A copy of the Responses were also filed via the Commission's DMS.

Andrew M. Bateman, Esq. (abateman@ors.sc.gov)
Jeff Nelson, Esq. (jnelson@ors.sc.gov)
John J. Pringle, Jr., Esq. (jack.pringle@arlaw.com)
John F. Beach, Esq. (john.beach@arlaw.com)

/s/ Thomas P. Gressette Jr.

Thomas P. Gressette, Jr.

GA Rate Case Invoices and Payments to Date

<u>GA Consulting - Rate Case Docket No 2014-346-WS</u>	<u>Invoice No.</u>	<u>Due</u>	<u>Paid</u>	<u>Bank Statement</u>	<u>Reference Page</u>
Invoiced 7.10.14	133	\$ 1,612.50	12.1.14		
Invoiced 9.5.14	139	\$ 16,687.50	12.1.14	\$ 23,430.00	2
Invoiced 10.14.14	145	\$ 5,130.00	12.1.14		
Invoiced 11.11.14	151	\$ 13,122.50	8.22.18		
Invoiced 12.9.14	165	\$ 14,600.00	8.22.18		
Invoiced 1.5.15	170	\$ 19,932.50	8.22.18		
Invoiced 2.10.15	179	\$ 25,239.02	8.22.18		
Invoiced 3.6.15	184	\$ 15,692.50	8.22.18		
Invoiced 4.8.15	192	\$ 4,792.50	8.22.18	\$ 271,979.00	3
Invoiced 5.20.15	204	\$ 17,992.50	8.22.18		
Invoiced 6.5.15	209	\$ 19,067.48	8.22.18		
Invoiced 7.1.15	211	\$ 53,810.00	8.22.18		
Invoiced 8.10.15	215	\$ 67,860.00	8.22.18		
Invoiced 10.14.15	223	\$ 19,870.00	8.22.18		
Invoiced 11.9.15	228	\$ 82,695.34	10.10.19	\$ 82,695.34	4
Invoiced 12.11.15	232	\$ 37,812.50	11.16.19		
Invoiced 1.6.16	236	\$ 17,412.50	11.16.19	\$ 55,225.00	5
Invoiced 2.4.16	242	\$ 14,652.50	3.18.20	\$ 14,652.50	6
Invoiced 3.12.16	247	\$ 3,772.50	3.26.20	\$ 3,772.50	6
Invoiced 5.16.16	259	\$ 5,562.50	3.26.20	\$ 5,562.50	6
Invoiced 6.21.16	263	\$ 8,522.50	3.26.20	\$ 8,522.50	6
Invoiced 7.13.16	269	\$ 5,617.50	3.26.20	\$ 5,617.50	6
Invoiced 8.12.16	274	\$ 2,537.50	3.26.20	\$ 2,537.50	6
Invoiced 9.6.16	277	\$ 15,357.50	3.26.20	\$ 15,357.50	6
Invoiced 11.18.16	288	\$ 1,307.50	6.26.20		
Invoiced 1.9.17	292	\$ 22,117.50	6.26.20	\$ 31,250.00	7
Invoiced 7.17.17	327	\$ 7,825.00	6.26.20		
Invoiced 8.18.17	333	\$ 2,325.00			
Invoiced 9.15.17	335	\$ 9,700.00			
Invoiced 10.17.17	337	\$ 10,351.25			
Total as of November 1, 2017		\$ 542,978.09			
Amoujnt Paid to date		\$ 520,601.84			

Note: Does not include subsequent billings.

SUNTRUST BANK
PO BOX 305183
NASHVILLE TN 37230-5183



EXHIBIT 2
Page 4 of 4
36/E00/0175/0 /16
1660
12/31/2014

Account Statement

1252

DAUPHIN ISLAND UTILITY COMPANY, INC.
C/O QUANTUM ASSESSMENT LLC
4000 N. W. 11th Ave.
Fort Lauderdale, FL 33309

SUNTRUST
11/25/2014

PAY TO THE ORDER OF Quantum Associates LLC \$ 23,430.00

Twenty-Three Thousand Four Hundred Thirty and 00/100 DOLLARS

Quantum Associates LLC
1331 Myrtle Blvd
Jupiter, FL 33408

MEMO

1252

Chk # 1252 12/01 \$23,430.00

SUNTRUST BANK
PO BOX 305183
NASHVILLE TN 37230-5183

Page 3 of 3
36/E00/0175/0/16
[REDACTED] 1660
08/31/2018 660

SUNTRUST

**Account
Statement**

08/22

271,979.00

ONLINE BANKING TRANSFER TO 0175 [REDACTED] 1694

SUNTRUST BANK
PO BOX 305183
NASHVILLE TN 37230-5183



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EXHIBIT 2
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[REDACTED] 1660
11/30/2019

**Account
Statement**

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11/18

555,250.00

ONLINE BANKING TRANSFER TO 0175 [REDACTED] 1694

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EXHIBIT 2
Page 2 of 3
36/E00/0175/0/16
[REDACTED] 1660
03/31/2020



Account Statement

03/18	14,652.50
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
03/26	3,772.50
03/26	5,562.50
03/26	8,522.50
03/26	5,617.50
03/26	2,537.50
03/26	15,357.50

ONLINE BANKING TRANSFER TO 0175 1000159151694

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

ONLINE BANKING TRANSFER TO 0175 [REDACTED] 1694
ONLINE BANKING TRANSFER TO 0175 [REDACTED] 1694
ONLINE BANKING TRANSFER TO 0175 [REDACTED] 1694
ONLINE BANKING TRANSFER TO 0175 [REDACTED] 1694
ONLINE BANKING TRANSFER TO 0175 [REDACTED] 1694
ONLINE BANKING TRANSFER TO 0175 [REDACTED] 1694

SUNTRUST BANK
PO BOX 305183
NASHVILLE TN 37230-5183

SUNTRUST

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EXHIBIT 2

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36/E00/0175/0/16
[REDACTED] 1660
06/30/2020

**Account
Statement**

06/26 1,307.50
06/26 22,117.50
06/26 7,825.00

ONLINE BANKING TRANSFER TO 0175 [REDACTED] 1694
ONLINE BANKING TRANSFER TO 0175 [REDACTED] 1694
ONLINE BANKING TRANSFER TO 0175 [REDACTED] 1694

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